IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE THIRTIETH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE C.V.RAMULU

WRIT PETITION Nos.35485 of 1998 and 24901 of 1999

1.W.P.No.35485 of 1998

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Between:

1. E.Murray, S/o.Joseph, 38 years, Assistant Security Officer, University Arts & Science College, R/o.Railway Quarter No.338/14, Khazipet,Warangal.

2. L.Mohan Rao, S/o.Rajaih, 34 years, Security Guard, R/o.H.No.2-2-10, Waddepalli, Warangal.

3. M.Srinivas, S/o.Yellaiah, 31 years, Security Guard, R/o.Kumarapalli, Hanumakonda, Warangal.

4. M.Raju, S/o.Papaiah, 26 years,Security Guard, R/o.H.No.2-9-1250, Waddepalli, Warangal.

5. N.Mahender, S/o.Papaiah, 30 years,Security Guard, R/o.Hasanparthy, Warangal District.

6. K.Ravinder, S/o.Chandrarao, 23 years, Security Guard, Waddepalli, Warangal.

7. K.Shankar, S/o.Basavaiah, 36 years, Security Guard, R/o.Waddepalli, Warangal.

8. A.Ilaiah, S/o.Mallaiah, 24 years, Security Guard, R/o.H.No.2-10-18, R/o.Waddepalli, Warangal.

9. T.Punnamchander, S/o.Ashaiah, 35 years, Security Guard, R/o.Nayeem Nagar, Hanumakonda, Warangal.

10. K.Yadagiri, S/o.Lakshmaiah, 30 years, Security Guard, Warangal.

11. N.Sudhakar, S/o.Ratnam, 32 years, Security Guard, Komatipalli, Warangal.

...PETITIONERS

AND

1. The Commissioner of Labour, Government of Andhra Pradesh, Tanguturi Anjaiah Bhavan, R.T.C.Cross Roads, Hyderabad.

2. The Registrar, Kakatiya University, Warangal.

3. The Principal, University Arts & Science College, Warangal.

4. The Director, S.D.L.C.E., Kakatiya University, Warangal.

5. Kakatiya Reliance Security Services, Warangal, rep.by its partner Mr.O.Rajeswara Rao, 50 years, R/o.H.No.25-4-1-4/2, Vishnupuri, Khazipet, Warangal.

6. Rathod Security Services, rep.by its Assistant Security Officer, R/o.H.No.1-2-120, Main Road, Khazipet, Warangal District.

(R6 is impleaded as per Court order dated 31.03.2000 in W.P.M.P.No.6848 of 2000).

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate writ, order or direction, more particularly one in the nature of Writ of Mandamus declaring the inaction of the first respondent in not taking any action against respondents 2 to 5, the action of the second respondent in entrusting the services of the petitioners to the fifth respondent for engaging them as Assistant Security Officer/Security Guards and treating them as contract labour even though it was prohibited by the Government of A.P. in G.O.Ms.No.492 dated 16.10.1980 and also G.O.Ms.No.107 dated 31.10.1988 and the action of respondents 2 to 5 in paying to the petitioners less than the minimum wages as prescribed by the District Collector, Warangal as illegal, unjust, contrary to law, amounts to unfair labour practice and violative of Articles 14, 16, 21 and 43 of the Constitution of India and consequently to declare that the petitioners are the employees of respondents 2 to 4 only that they are entitled for regularization of their services as watch andward personnel of respondents 2 to 4 and also direct the respondents 2 to 5 to pay minimum wages as fixed by the District Collector, Warangal.

Counsel for the Petitioners: MR.A.K.JAYAPRAKASH RAO

Counsel for the Respondents: MR.B.NARAYANA REDDY

G.P. for Labour

2.WRIT PETITION NO.24901 of 1999

Between:

1. Dadhi Rajeswar, S/o.Sambaiah, 25 years, Security Guard, R/o.12-54, Hasanparthy, Warangal District.

2. Dadhi Venugopal, S/o.Sambaiah, 22 years,Security Guard, R/o.12-54, Hasanparthy, Warangal District.

3. Gaddam Kumaraswamy, S/o.Rajaiah, 24 years, Security Guard, R/o.Ananthasagar, Hasanparthy Mandal, Warangal District.

...PETITIONERS

AND

1. The Government of A.P., rep.by its Commissioner of Labour, Tanguturi Anjaiah Bhavan, R.T.C.Cross Roads, Hyderabad.

2. The Kakatiya University, rep.by its Registrar, Warangal.

3. The School of Distance Learning and Continuing Education, rep.by its Director, Kakatiya University, Warangal.

4. Kakatiya Reliance Security Services, Warangal, rep.by its Partner Mr.O.Rajeswara Rao, 50 years, R/o.25-4-104/2, Vishnupuri, Khazipet, Warangal District.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to call for the records from the respondents and issue an appropriate writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the inaction of the 1st respondent in not taking any action against of the respondents 2 to 4 herein that the action of the 2nd respondent in entrusting the services of the petitioners to the 4th respondent for engaging them as Security Guards and treating them as Contract Labour even though it was prohibited by the Government of A.P. in G.O.Ms.No.492 dated 16.10.1980 and also in G.O.Ms.No.107, dated 31.10.1988, the action of the Respondents 2 to 4 in paying less than the minimum wages to the petitioners as prescribed by the District Collector, Warangal as illegal, unjust, contrary to law, amounts to unfair labour practice and violation of Articles 14, 16, 21 and 43 of the Constitution of India and consequently declare that the petitioners are the employees of the respondents 2 and 3 only that the petitioners are entitled for regularization of their services as watch and ward personnel/Security Guards of the Respondents 2 and 3 and also to direct the respondents 2 to 4 to pay minimum wages as fixed by the District Collector, Warangal.

Counsel for the Petitioners: MR.P.SRIDHAR RAO

Counsel for the Respondent No.1: G.P. for Labour
Counsel for the Respondent Nos.2 and 3: MR.DEEPAK BAHATTACHARJEE
Counsel for the Respondent No.4: MR.K.RAMI REDDY
G.P. for Labour

The Court made the following:

THE HON'BLE MR JUSTICE C.V.RAMULU

WRIT PETITION NOs.35485 of 1998 and 24901 of 1999

COMMON ORDER:

These two Writ Petitions are filed seeking a mandamus declaring the action of the first respondent in entrusting the services of the petitioners (Watch and Ward) to the fifth respondent for engaging them as Assistant Security Officer/Security Guards and treating as contract labourer, even though it was prohibited by the Government through G.O.Ms.No.492 dated 16.10.1980 and G.O.Ms.No.107 dated 31.10.1988 and further not paying the minimum wages as prescribed under the Minimum Wages Act to the petitioners as arbitrary and illegal and consequentially to direct the respondents to regularize the services of the petitioners in Watch and Ward Department of the respondent Nos.2 to 4 and also direct respondent Nos.2 to 5 to pay the minimum wages as fixed under the Minimum Wages Act.

It is the case of the petitioners that they are working as Assistant Security Officers/Security Guards under the control of respondent Nos.2 to 4. The nature of work attended to by them being Watch and Ward is perennial in nature. The second

respondent has not obtained any license under the Contract Labour (Regulation and Abolition) Act, 1970 ('the Act' for brevity). Likewise, the fifth respondent also does not possess any valid license under the Act. Therefore, the entrustment of Watch and Ward duties on contract basis to the fifth respondent is illegal. The engaging of contract labour in the Watch and ward of the University has been abolished by the State Government by way of notifications under Section 10 (1) of the Act through G.O.Ms.No.492 dated 16.10.1980 and G.O.Ms.No.107 dated 31.10.1988. Therefore, the entrustment of the work on contract basis to the fifth respondent is arbitrary and illegal. Further, the petitioners are paid less than the minimum wages applicable to the Watch and Ward staff as fixed by the Collector under the Minimum Wages Act. The petitioners are entitled for a minimum wage of Rs.68/- per day, whereas the first petitioner is paid at Rs.1,600/- per month and the other petitioners are paid at Rs.700/- per month, which is far less than the minimum wages fixed under the Minimum Wages Act. Therefore, the act of the respondents is arbitrary and illegal.

Counters are filed on behalf of respondent Nos.2 to 4 and respondent No.5 denying the allegations made by the petitioners.

The learned counsel for the petitioners strenuously contended that the G.O.Ms.No.492 dated 16.10.1980 and G.O.Ms.No.107 dated 31.10.1988, which are notified under Section 10 (1) of the Act relates to engaging of watch and ward personnel in the establishments. Therefore, the University being an establishment and an industry is not supposed to entrust the regular Watch and Ward to any contract agency.

Per contra, the learned counsel for the respondents contends that the very

notifications purported to have issued under the said G.Os have no application to the University and the contract labour system in so far as the Watch and Ward Department of the University is concerned is not abolished and there is no specific notification issued in this regard by the Government of Andhra Pradesh under Section 10 (1) of the Act.

I have given earnest consideration to the respective submissions made by the learned counsel on the either sides and perused the material made available on record. At the outset, I am of the opinion that the said notifications relied upon by the petitioners stating that the engagement of contract labour in the Watch and Ward Department of the respondent-University is abolished under G.O.Ms.No.492 dated 16.10.1980 and G.O.Ms.No.107 dated 31.10.1988 is not applicable.

In this regard, it may be necessary to notice the provisions of Section 10 (1) of the Act, which reads as under:

> **10. Prohibition of employment of contract labour** :- (1) Notwithstanding anything contained in this Act, the appropriate Government may, after consultation with the central Board or, as the case may be, a State Board prohibit, by notification in the Official Gazette, employment of contract labour in any process, operation or other work in any establishment.

Further, the notification issued under G.O.Ms.No.492 dated 16.10.1980 reads as under:-

> And whereas, after considering the said report, Government has come to the conclusion to abolish Contract Labour System in some of the categories of work where less than twenty persons are employed in factory and therefore is considered necessary to extend the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 (Central act No.37 of 1970) to the said categories of work, the said having

been previously published as required under sub-section (4) of Section 1 of the said act;

Now, therefore, in exercise of the powers conferred by the proviso to sub-section (4) of Section 1 of the Contract Labour (Regulation and Abolition) Act, 1970 (Central Act No.37 of 1970), the Government of Andhra Pradesh hereby applies the provisions of the said Act to the following categories of establishment in which contract labour is employed generally in all the factories in the State of Andhra Pradesh.

1. Watch and ward personnel, if not hired through specialized agencies.
2. Routine sweeping and scavenging personnel working inside the factory.
3. Boiler House Workers.
4. Workers employed in the maintenance of Planting Machinery.
5. Persons engaged in automobile garages and workshops inside the factory where the work is continuous.

Further, the notification issued under G.O.Ms.No.107 dated 31.10.1998 reads as under:

1. Whereas, the Government of Andhra Pradesh have constituted a State Advisory Contract Labour Board under sub-section (1) of Section 4 of the Contract Labour (Regulation & Abolition) Act, 1970 (Central Act No.37 of 1970) to advise the State Government on matters arising out of administration of the said Act.

2. And, whereas, after considering the said report, the Government have decided to apply the provisions of the said Act to the contractors employing even less than 20 workers also.

3. And, whereas the Government in pursuance of the recommendations of the Advisory Contract Labour Board has issued a notification under the proviso to sub-section (4) of Section 1 of the Contract Labour (Regulation and Abolition) act, 1970, (Central Act No.37 of 1970) applying the provisions of the said Act in G.O.Ms.No.152, L.E.N. & T.E. Department, dt.the 21st April, 1987 and published in the Extraordinary (Part I) issue No.465 of Andhra Pradesh Gazette, dated the 22nd June, 1987 giving two months for objections and suggestions.

4. And, whereas, certain objections and suggestions have been received from certain organizations and after careful examination, and consideration the Government has come to the conclusion that these objections do not merit any consideration as the Contract Labour engaged through their organizations is considerably a limited one.

5. Now, therefore, in exercise of the powers conferred bythe proviso to sub-section(4) of the Section 1 of the Contract Labour (Regulation and Abolition) mAct, 1970 (Central act No.37 of 1970). The Governor of Andhra Pradesh hereby applies the provisions of the said act to the following:

1. to every Contractor who employs or who employed on any day of the preceding twelve months five or more workmen in any establishment to which the provisions of the said Act applies; and

2. if the same or similar work in any establishment is given to different contractors, the aggregate of the workers employed by all the contractors in the same or similar work of the establishment shall be taken into account for the applicability of the provisions of the said Act.

A bare reading of the above two notifications issued by the Government of Andhra Pradesh under Section 10 (1) of the Act does not indicate that they are also applicable to the respondent-University. What all these two notifications speak is only the applicability of the abolition of the contract labour system, in general, in the factories and not in the Universities. University is an industry but not a factory. Therefore, the contention of the learned counsel for the petitioners that the University being an industry, the above two notifications abolishing the contract labour system in Watch and Ward Department in all the factories automatically applicable to the University cannot be countenanced. In fact there is no specific enquiry made as to abolition of contract labour system in the respondent-University as required under Section 10 (1) of the Act and no specific notification has been issued. It is the imagination of the petitioners that those two notifications are also applicable to the Universities since University is an establishment and also an industry. Therefore, the contention of the petitioners that this court must declare that the entrustment of the services of the petitioners to a contract labour agency, in view of the existence of the notifications is arbitrary and illegal and also cannot be countenanced. It is for the petitioners to work out their remedies as available under the law. The confidence of this Court is not inspired for declaring the action of the respondents in entrusting the

Watch and Ward department for contract labour system in the light of the above mentioned notifications as bad. The Writ Petitions are devoid of merits and are liable to be dismissed.

The two Writ Petitions are dismissed. However, it is contended by the learned counsel for the petitioners that in view of the interim order passed by this Court on 05.10.1999, the respondents have deposited the minimum wages as fixed by the Collector under the Minimum wages Act and the same is lying with the Labour Court. The learned counsel for the petitioners seeks for withdrawal of the same. Permission accorded. However, this will not prevent the petitioners from approaching any other legal forum and working out their remedies as available under the law. No costs.

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(C.V.RAMULU, J)

30th June 2005

RRB

ASSISTANT REGISTRAR

//True Copy//

SECTION OFFICER

Copy To:

1. The Commissioner of Labour, Government of Andhra Pradesh, Tanguturi Anjaiah Bhavan, R.T.C.Cross Roads, Hyderabad.
2. The Registrar, Kakatiya University, Warangal.
3. The Principal, University Arts & Science College, Warangal.
4. The Director, S.D.L.C.E., Kakatiya University, Warangal.
5. Mr.O.Rajeswara Rao, partner, 50 years, Kakatiya Reliance Security Services, Warangal, R/o.H.No.25-4-1-4/2, Vishnupuri, Khazipet, Warangal.
6. The Assistant Security Officer, Rathod Security Services, R/o.H.No.1-2-120, Main Road, Khazipet, Warangal District. The Government of A.P., rep.by its Commissioner of Labour, Tanguturi Anjaiah Bhavan, R.T.C.Cross Roads, Hyderabad.
7. Two CCs to G.P. for Labour, High Court buildings, Hyderabad (OUT).
8. Two CD copies.